Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

NO. 88-1102

In the Supreme Court of the United States

OCTOBER TERM, 1988

WESTMINSTER MANAGEMENT CORPORATION, ET ALS.

Petitioners,

v.

PAUL C. MITCHELL, JR., DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS, AND ATTORNEY GENERAL WILLIAM J. GUSTE, JR., ATTORNEY GENERAL OF THE STATE OF LOUISIANA

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

RESPONDENTS APPENDIX TO OPPOSITION

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THE SUPREME COURT
OF THE STATE OF LOUISIANA

WESTMINSTER MANAGEMENT CORPORATION, ET AL

VS. NO. 87-CC-2602

PAUL C. MITCHELL, DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS

- - - - - - - - - - -

IN RE: Mitchell, Paul C.; Applying for Writ of Certiorari and/or Review, Prohibition, Mandamus, Supervisory and/or Remedial Writs; to the Court of Appeal, Fourth Circuit, Number CW-8656; Parish of Orleans Civil District Court Div. "G" Number 87-3697, 87-3727, 87-3728, 87-3898

- - - - - - - - - - -

December 10, 1987

Granted. The judgment of the Court of Appeal is reversed and vacated, and the judgment of the district court is reinstated, for the reasons assigned by the district judge.

JAD

PFC

JLD

JCW

HTL

LFC

Supreme Court of Louisiana
December 10, 1987

s/ _____
Clerk of Court
For the Court

B-1

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-3697 c/w
87-3727
87-3728
87-3898

DIVISION "G"

DOCKET 4

WESTMINSTER MANAGEMENT CORPORATION, ET AL

VERSUS

PAUL C. MITCHELL, JR., DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS

JUDGMENT

This cause came on for hearing on June 12, 1987, on rule to release funds held in escrow filed herein on May 12, 1987 and was continued for submission of briefs by counsel.

PRESENT: Betty Mullin, Moise Steeg, Robert Steeg, Mitchell Herzog, Richard Anderson - Attorneys for plaintiffs

Blaine Lecesne - Attorney for defendant

WHEN, after hearing the pleadings and arguments the court having considered the entire record and the memorandum filed therein and for the written reasons herein assigned and made part of the record;

IT IS ORDERED AND ADJUDGED AND DECREED that the rule to release funds held in escrow be and the same is hereby granted, and that the sum of $5,730,654.12 is released from escrow to the City of New Orleans for utilization according to law.

JUDGMENT signed this 3rd day of August, 1987.

s/ STEVEN R. PLOTKIN

Judge

CIVIL DISTRICT COURT
FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 87-3697 c/w
87-3727
87-3728
87-3898

DIVISION "G"

DOCKET 4

WESTMINSTER MANAGEMENT CORPORATION, ET AL

VERSUS

PAUL C. MITCHELL, JR., DIRECTOR OF FINANCE OF THE CITY OF NEW ORLEANS

REASONS FOR JUDGMENT

This matter came before the Court on a motion filed by defendant, Paul C. Mitchell, Jr., Director of Finance of the City of New Orleans (City) against the plaintiffs, Westminster Management Corp., et al, Pan American Life Insurance Co., Panacon, and BEVPAC Properties (taxpayers) for a partial release of escrowed taxes paid by the taxpayers

under protest in accordance with La. R.S. 47:2110.

The plaintiffs' suit challenges the validity and constitutionality of 1987 ad valorem tax assessed on realty throughout the City of New Orleans. Plaintiffs allege that the 1987 ad valorem tax assessments were not uniform city-wide and pray for a full refund of the taxes paid under protest.

The narrow issue presented is whether all or part of the property taxes paid by plaintiffs in 1987 should be escrowed pending the outcome of the litigation. The resolution of this issue requires an examination of the legislative history of La. R.S. 47:2110.

The legislative history of Section 2110 begins with Act 16 of 1934, which prohibited state courts from issuing any process to restrain the collection of any

tax imposed by the State of Louisiana or any political division thereof. The statute also provided that the taxpayer who paid any tax, which was declared illegal, would be reimbursed.

Act 23 of 1935 retained the provisions of Act 16, but defined the procedure for instituting suit to recover taxes declared illegal.

Act 330 of 1938 repealed and replaced Act 16 and Act 23, and created the doctrine of "payment under protest." Section 2(A) of this statute provided:

> "A right of action is hereby created to afford a remedy at law for any person aggrieved by the provisions of this Act; and in case of any such person resisting the payment of any amount found due, or the enforcement of any provision of such laws in relation thereto, such person shall pay the amount found due by the officer designated by law for the collection of the said tax and shall give the officer notice, at the time, of his intention to file

> suit for the recovery of the same; and upon receipt of such notice, the amount so paid shall be segregated and held by the officer designated by law for the collection of the tax for a period of thirty (30) days; and if suit be filed within such time for the recovery of such amount, such funds so segregated shall be further held, pending the outcome of such suit. If the person prevails, the officer designated by law for the collection of the tax shall refund the amount to the claimant, with interest at the rate of 2% per annum covering the period from the date said funds were received by the officer designated by law for the collection of said tax to the date of refund." (Emphasis added)

In 1986, the Legislature enacted Act 540, which amended Section A of La. R.S. 47:2110 to read as follows:

> "A. No court of this state shall issue any process whatsoever to restrain the collection of an ad valorem tax imposed by the state, or by any political subdivision thereof, under authority granted to it by the legislature or by the constitution. Any person resisting the payment of any

amount of tax found due, or the enforcement of any provision of the tax laws in relation thereto, shall pay the amount found due to the officer designated by law for the collection of such tax and shall give the officer notice at the time of payment of his intention to file suit for the recovery of such tax. Upon receipt of such notice, the amount so paid shall be segregated and held by the officer for a period of thirty days. If suit is filed within such time for the recovery of the tax, then that portion of the taxes paid that are in dispute shall be deemed as paid under protest and such amount shall be segregated and shall be further held pending the outcome of the suit. That portion of the taxes paid by the taxpayer to the officer which is not in dispute shall not be made subject to the protest. If the taxpayer prevails, the officer shall refund the amount to the taxpayer with interest at the rate of two percent per annum for the period from the date such funds were received by the officer to the date of such refund. If the taxpayer does not prevail, the taxpayer shall be liable for the additional taxes together with interest at the rate of two percent per annum from the date the notice of intention to file suit for

> recovery of taxes was given to the officer until the date such taxes are paid. (Emphasis added)

The primary rule of statutory construction is that of legislative intent, meaning the courts must endeavor to ascertain the reason and spirit of the law, or the cause which induced the legislature to enact the law. La. C.C. Art. 18. In determining legislative intent, the words of an act are to be understood in their usual signification and in accordance with the general and popular use of the words. La. C.C. Art. 14.

It is clear and unambiguous that by enacting Act 540 of 1986, the Legislature intended to limit the amount of taxes paid under protest to the portion of taxes "in dispute." The amendment creates a distinction between the portion of the taxes paid that are "in dispute" and the

portion of taxes paid that are not in dispute. It declares unequivocally that the portion of the taxes paid which is not in dispute shall not be made subject to the protest and that only the disputed portion of the taxes paid under protest shall be escrowed pending the outcome of the litigation. (Emphasis added)

In 1987, plaintiffs paid approximately $9,727,336.99 in ad valorem property taxes under protest. These funds are presently being held in an escrow account and have been invested in United States Treasury bills. Plaintiffs claim their entire tax payment is in dispute because the 1987 assessments are not uniform and the Court could order a reassessment or equalization of all assessments in the City of New Orleans. Secondly, plaintiffs contend that the amount of any tax refund, with

litigation costs and interest, is incalculable at this time.

The City contends that the amount in dispute is the difference between plaintiffs' 1987 taxes ($9,727,336.99) and 1986 taxes ($5,730,654.12), and that this quantum must be held in escrow.

There is no legal authority to support the taxpayers' position that their tax liability in 1987 could be less than their tax liability in 1986. However, in Probst v. City of New Orleans, 325 So.2d 665 (La. App. 4th Cir. 1976), rev'd on other grounds, 337 So.2d 1081 (La. 1976), the Fourth Circuit Court of Appeals limited a taxpayer's relief in a suit challenging the constitutionality of property assessments to reinstatement of the prior year's assessment. Therefore, it is more likely than not that if the taxpayers prevail, their ad valorem tax liability for 1987 will

not be less than $5,730,654.12, the amount of their 1986 ad valorem taxes.

The City of New Orleans is not insolvent. Should the taxpayers secure a judgment higher than their cumulative 1986 taxes, the City has the present and future ability to satisfy the liability. The calculation of litigation costs and interest at this time is irrelevant, because that is not required by the statute under review. Furthermore, the interest income on the escrowed funds will generate surplus funds to outbalance these expenses.

In conclusion, the clear legislative language of La. R.S. 47:2110(A), mandates that the Court hold that the ad valorem property taxes paid by the owners under protest, which are in dispute, is the sum of $3,996,682.87, the difference between plaintiffs' 1987 taxes ($9,727,336.99) and 1986 taxes ($5,730,654.12). The sum of

$5,730,654.12 is not in dispute and shall be immediately released from escrow and may be utilized by the City, as provided by law.

New Orleans, Louisiana this 3rd day of August, 1987.

s/ STEVEN R. PLOTKIN

Judge